Table of Contents.

Jurisdiction	1
Alleged questions presented	1
Statement of the case	2
Reasons for not granting the writ	5
Argument	5
Conclusion	7

Table of Authorities Cited.

Cases.

Abbott v. Inhabitants of North Andover, 145 Mass. 484	5
Bell v. Eames, 310 Mass. 642	6
Cayon v. Chicopee, Mass. Adv. Sh. (1971) 1785	6
Fluet v. Eberhardt, 294 Mass. 408	6
Galassi Mosaic & Tile Co. v. Boston, 295 Mass. 544	5
Glover v. Waltham Laundry Co., 235 Mass. 330	5
Higginson v. Fall River, 226 Mass. 423	6
Lawrence v. Stratton, 312 Mass. 517	5
Reed v. Springfield, 258 Mass. 115	6
Sykes v. Smith, 333 Mass. 560	5

Statutes, Etc.

U.S. Constitution, Fifth Amendment	2, 5
U.S. Constitution, Fourteenth Amendment	2
Mass. G.L. c. 60, §§ 64, 69	6, 7
Mass. G.L. c. 185, § 1	6

Supreme Court of the United States.

OCTOBER TERM, 1972.

No. 72-443.

CAMPO CORPORATION ET AL.,
Petitioners,
v.
SUPREME JUDICIAL COURT FOR THE COMMONWEALTH OF MASSACHUSETTS,
Respondent.

BRIEF OF THE CITY OF LAWRENCE, COMMONWEALTH OF MASSACHUSETTS, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Jurisdiction.

This petition for writ of certiorari was not filed within 90 days of the date of the entry of the judgment of the Supreme Judicial Court of the Commonwealth of Massachusetts on June 14, 1972, and therefore should be denied.

Alleged Questions Presented.

The city of Lawrence contends that there is no question to be presented before this Honorable United States Court

in that the petitioners were not deprived of property without due process of law nor was private property taken for public use without just compensation in violation of article V and article XIV of the amendments of the Constitution of the United States.

Statement of the Case.

The major petitioner is Jean C. Campopiano, an attorney and also major stockholder in Campo Corporation, a Massachusetts corporation which was revived in 1968 after the commencement of this suit against the city of Lawrence *et als.*, on July 14, 1966. The petitioners name the city of Lawrence, a municipal corporation; Daniel P. Kiley, Jr., the then mayor, and Roland F. Deziel, the city treasurer, as respondents.

The city of Lawrence operates under a charter establishing a commission form of government. The said government consists of a mayor and four aldermen who administer, individually, separate municipal departments and constitute the city council.

The respondent Daniel P. Kiley, Jr., was elected mayor to serve a term of two years beginning January 1, 1966, and he succeeded the former mayor, John J. Buckley, who was the mayor during the years covered by the petitioners' bill of complaint.

The petitioners allege to have owned property known as the Capitol Theatre, located at 139 Common Street in the city of Lawrence.

The respondent city of Lawrence on June 1, 1959, brought a petition in the Land Court of Massachusetts to foreclose all rights of redemption from certain tax lien proceedings against the real estate known as the Capitol Theatre, allegedly owned by the petitioners Jean C. Campopiano and Helen D'Errico at that time. This culminated in a decree

of the Land Court of Massachusetts foreclosing the rights of the petitioners, dated December 8, 1967, which was subsequent to the commencement of this bill in equity against the city of Lawrence *et als.*, on July 22, 1966, establishing that there was due the city of Lawrence for taxes approximately $75,045.75.

On or about September 9, 1963, a proposed off-street parking plan, including possible land acquisitions, was submitted to the city of Lawrence for consideration by the local chamber of commerce. The Capitol Theatre parcel, so-called, allegedly owned by the petitioners, was not included therein. As a result, the petitioner Jean C. Campopiano promulgated a petition, signed by certain local residents, which was presented to the city council for its consideration.

The then mayor, John J. Buckley, suggested to the city clerk that the premises be included for consideration with the eight properties theretofore suggested.

Proposals were submitted by Roland R. Siskind and Richard G. Whipple, regarding appraisals of the several properties located in the downtown section which were to be considered for acquisition for off-street parking.

On March 9, 1964, the city council voted to advertise a $600,000 loan for the purpose of acquiring sites for public parking, and in April, 1965, all the sites, with the exception of the Capitol Theatre site, were taken by eminent domain.

The Capitol Theatre property, so-called, was appraised by Roland R. Siskind on October 1, 1964, and he set as a fair cash value the sum of $19,300; on October 20, 1964, Richard G. Whipple's appraisal set a fair cash value of $28,000.

The contents of these appraisals were made known to the petitioner Jean C. Campopiano and, at that time, there was approximately $70,000 in taxes due the city of Lawrence.

There being such a discrepancy between the actual cash value of the property as disclosed by the appraisers and the demand of the petitioners, it was decided by the mayor

and members of the city council that it would be unwise to take the property by eminent domain and thus inherit a land damage petition against the city of Lawrence, as the city was in the process of acquiring title to the property in the Massachusetts Land Court for nonpayment of taxes for the years 1951 to 1966, inclusive.

The master's hearings commenced on June 9, 1969, and witnesses were the former mayor, John J. Buckley; Roland F. Deziel, city treasurer; Joseph R. Smith, city clerk; Roland R. Siskind, appraiser; Richard G. Whipple, appraiser; Charles Lord, one of the assessors of the city of Lawrence; Nicholas J. Callahan, alderman and director of engineering; Vincent P. Foley, alderman and director of public safety; Gerard A. Guilmette, alderman and director of health and charities; and James J. O'Neill, alderman and director of public property and parks, all constituting the city council at the period covered by the bill of complaint; William F. Lucey, secretary and clerk of the Greater Lawrence Chamber of Commerce; Roger Bower, former president of the Greater Lawrence Chamber of Commerce, and the petitioner Jean C. Campopiano.

The master filed a report in which he found for the city of Lawrence *et als.*, on July 24, 1969.

An interlocutory decree confirming the master's report was entered October 3, 1969, and a final decree dismissing the bill was entered July 3, 1970 (Petition, p. 17).

The petitioners filed an appeal to the Supreme Judicial Court of the Commonwealth of Massachusetts on July 20, 1970 (Petition, p. 18) and on June 14, 1972, a rescript opinion was entered by said court affirming the final decree with costs of appeal (Petition, pp. 13-14).

Reasons for Not Granting the Writ.

1. The issue as alleged in this case by the petitioners was not properly raised before the Supreme Judicial Court of the Commonwealth of Massachusetts.

2. There were no improprieties by the city of Lawrence in not exercising its right of eminent domain.

3. The city of Lawrence did not, by any of its actions, destroy the alleged value of the petitioners' property and thus deprive the petitioners of their property rights in violation of the due process clause of the Fifth Amendment.

For these reasons the writ of certiorari should not be granted.

Argument.

The objections of the petitioners to the master's report were essentially argumentative against the conclusions of fact made by the master. There was no request for a summary of the evidence, the evidence was not reported and there was no motion to recommit. The city of Lawrence submits that the findings made by the master were not inconsistent, contradictory or plainly wrong and must be accepted as true. The Supreme Judicial Court of the Commonwealth of Massachusetts so found in its rescript opinion entered June 14, 1972. *Sykes* v. *Smith*, 333 Mass. 560, 565; *Glover* v. *Waltham Laundry Co.*, 235 Mass. 330, 334.

The petitioners' allegations of conspiracy were not substantiated by fact. The city of Lawrence, being a municipal corporation, cannot conspire with any person or persons or be guilty of conspiracy. *Galassi Mosaic & Tile Co.* v. *Boston*, 295 Mass. 544.

The mayor by virtue of his office has no powers to bind the city. *Lawrence* v. *Stratton*, 312 Mass. 517, 521; *Abbott*

v. *Inhabitants of North Andover*, 145 Mass. 484; *Higginson* v. *Fall River*, 226 Mass. 423; *Fluet* v. *Eberhardt*, 294 Mass. 408.

The mere fact that an order borrowing or appropriating the sum of $600,000 for the purpose of taking land by eminent domain was adopted by the mayor and the members of the city council, such borrowing or appropriating being for off-street parking, cannot be construed as authorizing the taking of petitioners' land, known as the Capitol Theatre. *Reed* v. *Springfield*, 258 Mass. 115, 118; *Cayon* v. *Chicopee*, Mass. Adv. Sh. (1971) 1785. The said premises, never having been taken, were definitely excluded from the order of taking by the city of Lawrence.

It would not have been in the best interest of the city of Lawrence to have taken the petitioners' land. By competent and reliable testimony of two appraisers, the fair cash value of the premises was set at $19,300 and $28,000, respectively, and the Massachusetts Land Court decreed that the petitioners owed the city of Lawrence taxes assessed against said premises in the amount of $75,045.75.

The Massachusetts Land Court proceedings, case No. 36892, concerning the premises described in the petitioners' bill of complaint ended with a final decree foreclosing the rights of redemption of Campo Corporation and Helen D'Errico, on December 8, 1967, from which decision no appeal has been taken. At the time of the entry of the final decree by the Massachusetts Land Court, it was decreed that Campo Corportaion owed the city of Lawrence taxes in the amount of $75,045.75.

Under the provisions of Mass. G.L. c. 185, § 1, the Land Court is a court of record and has exclusive jurisdiction over proceedings for foreclosure of and redemption from tax titles under chapter 60, section 64 of said General Laws. *Bell* v. *Eames*, 310 Mass. 642, 645.

The petitioners filed no petition in the Land Court seeking to vacate the decree under the provisions of said Mass. G.L. c. 60, § 69, and therefore title to the property in question, the Capitol Theatre, so-called, is vested in the city of Lawrence as of December 8, 1967.

Conclusion.

The master's finding that the petitioners' lease was intended solely as a device to create a nonexisting value and for use in anticipated dealings with the city of Lawrence must stand, as the Supreme Judicial Court of the Commonwealth of Massachusetts has found that the findings of the master were not mutually inconsistent, contradictory or plainly wrong and must be accepted as true.

Therefore the rescript opinion of the Supreme Judicial Court of the Commonwealth of Massachusetts entered June 14, 1972, should be affirmed and the city of Lawrence *et als.* be allowed their costs.

Respectfully submitted,
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Attorney for Respondents.